

MONTANA LEGISLATIVE HISTORY

Chapter 105 19 91

Bill H 148 S \_\_\_\_\_ Original bill & history ✓ C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Jan 18 ✓ C

Hearing Date(s) Feb 07 ✓ C

\_\_\_\_\_ C

Feb 12 ✓ C

\_\_\_\_\_ C

\_\_\_\_\_ C

\_\_\_\_\_ C

\_\_\_\_\_ C

Date Out Jan 21 ✓ C

Feb 12 ✓ C

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Did this bill originate in an interim committee? \_\_\_\_ Yes \_\_\_\_ No

Committee \_\_\_\_\_

Report \_\_\_\_\_

## HOUSE FINAL STATUS

HB 149

## HB 147 INTRODUCED BY COHEN

ALLOW LOCAL OPTION TAX ON CERTAIN  
TRANSFERS OF REAL PROPERTY

|      |                                         |    |    |
|------|-----------------------------------------|----|----|
| 1/11 | INTRODUCED                              |    |    |
| 1/11 | REFERRED TO TAXATION                    |    |    |
| 1/11 | FIRST READING                           |    |    |
| 1/11 | FISCAL NOTE REQUESTED                   |    |    |
| 1/16 | FISCAL NOTE RECEIVED                    |    |    |
| 1/18 | HEARING                                 |    |    |
| 1/18 | FISCAL NOTE PRINTED                     |    |    |
| 3/27 | COMMITTEE REPORT—BILL PASSED AS AMENDED |    |    |
| 4/02 | 2ND READING DO PASS MOTION FAILED       | 40 | 59 |

## HB 148 INTRODUCED BY TOOLE, ET AL.

ALLOW HOME ARREST IN LIEU OF INCARCERATION—  
MISDEMEANOR & FELONYBY REQUEST OF ADULT AND JUVENILE DETENTION,  
JOINT INTERIM SUBCOMMITTEE ON

|      |                                            |    |   |
|------|--------------------------------------------|----|---|
| 1/11 | INTRODUCED                                 |    |   |
| 1/11 | REFERRED TO JUDICIARY                      |    |   |
| 1/11 | FIRST READING                              |    |   |
| 1/11 | FISCAL NOTE REQUESTED                      |    |   |
| 1/17 | FISCAL NOTE RECEIVED                       |    |   |
| 1/18 | HEARING                                    |    |   |
| 1/21 | COMMITTEE REPORT—BILL PASSED AS AMENDED    |    |   |
| 1/23 | REVISED FISCAL NOTE PRINTED                |    |   |
| 1/25 | 2ND READING PASSED AS AMENDED              | 90 | 7 |
| 1/28 | 3RD READING PASSED                         | 88 | 8 |
|      | TRANSMITTED TO SENATE                      |    |   |
| 1/29 | FIRST READING                              |    |   |
| 1/29 | REFERRED TO JUDICIARY                      |    |   |
| 2/07 | HEARING                                    |    |   |
| 2/12 | COMMITTEE REPORT—BILL CONCURRED AS AMENDED |    |   |
| 2/14 | 2ND READING CONCURRED                      | 50 | 0 |
| 2/15 | 3RD READING CONCURRED                      | 49 | 0 |
|      | RETURNED TO HOUSE WITH AMENDMENTS          |    |   |
| 3/11 | 2ND READING AMENDMENTS CONCURRED           | 96 | 3 |
| 3/12 | 3RD READING AMENDMENTS CONCURRED           | 94 | 4 |
| 3/18 | SIGNED BY SPEAKER                          |    |   |
| 3/18 | SIGNED BY PRESIDENT                        |    |   |
| 3/18 | TRANSMITTED TO GOVERNOR                    |    |   |
| 3/20 | SIGNED BY GOVERNOR                         |    |   |
|      | CHAPTER NUMBER 105                         |    |   |

EFFECTIVE DATE: 10/01/91

## HB 149 INTRODUCED BY FORRESTER, ET AL.

MAKE PERMANENT THE BOARD OF OUTFITTERS

|      |                              |    |   |
|------|------------------------------|----|---|
| 1/11 | INTRODUCED                   |    |   |
| 1/11 | REFERRED TO FISH & GAME      |    |   |
| 1/12 | FIRST READING                |    |   |
| 1/12 | FISCAL NOTE REQUESTED        |    |   |
| 1/15 | FISCAL NOTE RECEIVED         |    |   |
| 1/17 | FISCAL NOTE PRINTED          |    |   |
| 1/22 | HEARING                      |    |   |
| 1/23 | COMMITTEE REPORT—BILL PASSED |    |   |
| 1/26 | 2ND READING PASSED           | 85 | 6 |
| 1/30 | 3RD READING PASSED           | 96 | 4 |
|      | TRANSMITTED TO SENATE        |    |   |
| 1/31 | FIRST READING                |    |   |
| 1/31 | REFERRED TO FISH & GAME      |    |   |
| 3/07 | HEARING                      |    |   |

HOUSE BILL NO. 148

INTRODUCED BY TOOLE, HALLIGAN,  
RUSSELL, J. RICE, STRIZICH  
BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE  
ON ADULT AND JUVENILE DETENTION

IN THE HOUSE

|                  |                                                                 |
|------------------|-----------------------------------------------------------------|
| JANUARY 11, 1991 | INTRODUCED AND REFERRED TO COMMITTEE<br>ON JUDICIARY.           |
|                  | FIRST READING.                                                  |
| JANUARY 21, 1991 | COMMITTEE RECOMMEND BILL<br>DO PASS AS AMENDED. REPORT ADOPTED. |
| JANUARY 22, 1991 | PRINTING REPORT.                                                |
| JANUARY 25, 1991 | SECOND READING, DO PASS AS AMENDED.                             |
| JANUARY 26, 1991 | ENGROSSING REPORT.                                              |
| JANUARY 28, 1991 | THIRD READING, PASSED.<br>AYES, 88; NOES, 8.                    |
|                  | TRANSMITTED TO SENATE.                                          |

IN THE SENATE

|                   |                                                                            |
|-------------------|----------------------------------------------------------------------------|
| JANUARY 29, 1991  | INTRODUCED AND REFERRED TO COMMITTEE<br>ON JUDICIARY.                      |
|                   | FIRST READING.                                                             |
| FEBRUARY 12, 1991 | COMMITTEE RECOMMEND BILL BE<br>CONCURRED IN AS AMENDED. REPORT<br>ADOPTED. |
| FEBRUARY 14, 1991 | SECOND READING, CONCURRED IN.                                              |
| FEBRUARY 15, 1991 | THIRD READING, CONCURRED IN.<br>AYES, 49; NOES, 0.                         |
|                   | RETURNED TO HOUSE WITH AMENDMENTS.                                         |

IN THE HOUSE

|                |                            |
|----------------|----------------------------|
| MARCH 11, 1991 | RECEIVED FROM SENATE.      |
|                | SECOND READING, AMENDMENTS |

MARCH 12, 1991

CONCURRED IN.

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *House* BILL NO. *148*  
2 INTRODUCED BY *Paul Fort*  
3 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE  
4 ON ADULT AND JUVENILE DETENTION

5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING HOME ARREST IN  
7 LIEU OF IMPRISONMENT FOR CERTAIN CRIMINAL OFFENSES; ALLOWING  
8 HOME ARREST FOR BOTH ADULT AND JUVENILE OFFENDERS;  
9 PROHIBITING HOME ARREST FOR CERTAIN FELONY OFFENSES;  
10 AMENDING SECTIONS 41-5-306, 41-5-403, 41-5-523, 46-18-201,  
11 61-8-714, AND 61-8-722, MCA; AND PROVIDING AN APPLICABILITY  
12 DATE."

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 NEW SECTION. Section 1. Definitions. As used in  
16 [sections 1 through 6], the following definitions apply:

17 (1) "Approved monitoring device" means an electronic  
18 device or apparatus, approved by the department of  
19 institutions, that is limited in capability to recording or  
20 transmitting information concerning the offender's presence  
21 in or absence from the home. The device must be minimally  
22 intrusive. A monitoring device may not be approved that is  
23 capable of recording or transmitting:

24 (a) visual images;

25 (b) oral or wire communications or any sound; or

1 (c) information concerning the offender's activities  
2 while inside the home.

3 (2) (a) "Home" means the temporary or permanent  
4 residence of an offender consisting of the actual living  
5 area. The term includes a hospital, nursing care facility,  
6 hospice, halfway house, group home, residential treatment  
7 facility, boarding house, or a facility described in  
8 41-5-306(1).

9 (b) When more than one residence or family are located  
10 on a single piece of property, the term does not include the  
11 residence of any other person who is not part of the social  
12 unit formed by the offender's immediate family.

13 (3) "Home arrest" means the use of a person's home for  
14 purposes of confinement.

15 (4) "Supervising authority" means the probation and  
16 parole bureau of the corrections division of the department  
17 of institutions or, in the case of a juvenile, the juvenile  
18 probation division of the youth court or any other person or  
19 entity appointed by the court.

20 (5) "Violent felony offense" means deliberate homicide,  
21 mitigated deliberate homicide, negligent homicide,  
22 aggravated assault, negligent vehicular assault, kidnapping,  
23 aggravated kidnapping, robbery, sexual intercourse without  
24 consent, sexual abuse of children, arson, aggravated  
25 burglary, escape, any criminal attempt to commit an

1 enumerated offense, or conviction as a persistent felony  
2 offender when the offender has a felony conviction for any  
3 of the listed offenses within the 5-year period preceding  
4 the date of the present conviction.

5 NEW SECTION. Section 2. Home arrest -- petition --  
6 agreement. (1) An offender may petition a sentencing court  
7 for an order directing that all or a portion of a sentence  
8 of imprisonment in the county jail or state prison be served  
9 under conditions of home arrest. Petitions may be considered  
10 and ruled upon by the sentencing court prior to and  
11 throughout the term of the offender's sentence.

12 (2) The sentencing judge shall study the records of all  
13 persons petitioning for home arrest and, in his discretion,  
14 may:

15 (a) cause additional background or character  
16 information to be collected or reduced to writing by the  
17 probation officer;

18 (b) conduct hearings on the desirability of granting  
19 home arrest;

20 (c) impose on the home arrestee conditions that are  
21 proper, including restitution;

22 (d) order that all or a portion of a sentence of  
23 imprisonment in the county jail or state prison be served  
24 under conditions of home arrest at whatever time or  
25 intervals, consecutive or nonconsecutive, that the court

1 determines. The time actually spent in home arrest pursuant  
2 to this section may not exceed 6 months or the maximum term  
3 of imprisonment imposed, whichever is shorter;

4 (e) issue a warrant for a person when there is reason  
5 to believe the person has violated the conditions of home  
6 arrest, conduct hearings on the matter, and order  
7 reimprisonment in the county jail or state prison upon proof  
8 of violation; and

9 (f) grant final discharge from arrest.

10 (3) A home arrestee shall execute a written agreement  
11 with the court setting forth all the conditions of home  
12 arrest. The order of home arrest must incorporate that  
13 agreement and must order compliance with its terms. The  
14 order and agreement must be transmitted to the supervising  
15 authority and to the appropriate jail or prison official.

16 (4) Time spent in home arrest must be credited against  
17 the maximum term of imprisonment imposed for the offender  
18 pursuant to law.

19 (5) Home arrest must be under the supervision of the  
20 supervising authority. A home arrestee is subject to the  
21 decisions of the supervising authority during the period of  
22 supervision. Fees for supervision or equipment usage must be  
23 paid directly to the supervising authority.

24 NEW SECTION. Section 3. Home arrest -- conditions --  
25 fees -- consent of cohabitators. (1) The conditions of home

1 arrest must include the following:

2 (a) The home arrestee must be confined to his home at  
3 all times except when:

4 (i) working at approved employment or traveling  
5 directly to and from employment;

6 (ii) seeking employment;

7 (iii) undergoing medical, psychiatric, or mental health  
8 treatment or participating in an approved counseling or  
9 aftercare program;

10 (iv) attending an approved educational institution or  
11 program;

12 (v) attending a regularly scheduled religious service  
13 at a place of worship; or

14 (vi) participating in an approved community service  
15 program.

16 (b) Violation of the provisions of subsection (1) may  
17 subject the home arrestee to prosecution under 45-7-306.

18 (c) The home arrestee shall conform to a schedule  
19 prepared by the supervising authority, specifically setting  
20 forth the times when he may be absent from the home and the  
21 locations where he may be during those times.

22 (d) The home arrestee may not commit another offense  
23 during the period of home arrest.

24 (e) The home arrestee may not change the place of home  
25 arrest or the schedule without prior approval of the

1 supervising authority.

2 (f) The home arrestee shall maintain a telephone or  
3 other approved monitoring device in the home or on the  
4 arrestee's person at all times.

5 (g) Any other reasonable conditions may be set by the  
6 court or the supervising authority, including:

7 (i) restitution;

8 (ii) supervision fees under 7-32-2245, 46-18-702, or  
9 46-18-703;

10 (iii) any of the conditions imposed on persons on  
11 probation or conditional discharge under 46-23-1011 or  
12 46-23-1021.

13 (2) A written and notarized consent agreement must be  
14 filed with the court by every adult who will share the  
15 offender's home during the term of home arrest.

16 NEW SECTION. **Section 4. Home arrest -- ineligibility.**

17 A person being held under a detainer, warrant, or process  
18 issued by some other jurisdiction is not eligible for home  
19 arrest. A person convicted of a violent felony offense is  
20 not eligible for home arrest.

21 NEW SECTION. **Section 5. Home arrest -- responsibility**

22 for own living expenses -- government benefits. A person  
23 serving a sentence under conditions of home arrest is  
24 responsible for food, housing, clothing, and medical care  
25 expenses and is eligible for government benefits to the same

1 extent as a person on probation, parole, or conditional  
2 discharge.

3 NEW SECTION. Section 6. Home arrest -- list of  
4 offenders. At least once every 30 days, the supervising  
5 authority shall provide all local and county law enforcement  
6 agencies with a list of the offenders under home arrest in  
7 their jurisdictions. This list must include the following  
8 information:

9 (1) the offender's place of home arrest;

10 (2) the offense for which the offender was charged,  
11 convicted, or otherwise placed under home arrest;

12 (3) the date that the sentence of home arrest will be  
13 completed; and

14 (4) the name, address, and phone number of the officer  
15 of the supervising authority for the offender.

16 **Section 7.** Section 41-5-306, MCA, is amended to read:

17 "41-5-306. (Temporary) Place of shelter care or  
18 detention. (1) After a probable cause hearing provided for  
19 in 41-5-303, a youth alleged to be a youth in need of  
20 supervision may be placed only in:

21 (a) in a licensed youth foster home as defined in  
22 41-3-1102;

23 (b) in a facility operated by a licensed child welfare  
24 agency; or

25 (c) in a licensed youth group home as defined in

1 41-3-1102; or

2 (d) under home arrest, either in his own home or in one  
3 of the facilities described in subsections (1)(a) through  
4 (1)(c), as provided in [sections 1 through 6].

5 (2) A youth alleged to be in need of care ~~shall~~ may be  
6 placed only in the facilities ~~stated~~ listed in subsection  
7 (1) ~~of this section~~ and ~~shall~~ may not be placed in a jail or  
8 other facility intended or used for the detention of adults  
9 charged with criminal offenses.

10 (3) After a probable cause hearing provided for in  
11 41-5-303, a youth alleged to be a delinquent youth may be  
12 placed only in the facilities described in subsection (1),  
13 under home arrest as provided in subsection (1), in a  
14 detention facility, or in a jail or other facility for the  
15 detention of adults only if the facilities in subsection (1)  
16 are not available or do not provide adequate security and  
17 the detention is in an area physically and visually separate  
18 and removed from that of adults. (Terminates July 1,  
19 1991--sec. 14, Ch. 434, L. 1989.)

20 41-5-306. (Effective July 1, 1991) Place of shelter  
21 care or detention. (1) After a probable cause hearing  
22 provided for in 41-5-303, a youth alleged to be a youth in  
23 need of supervision may be placed only in:

24 (a) in a licensed youth foster home as defined in  
25 41-3-1102;



1 (b) in a facility operated by a licensed child welfare  
2 agency; or

3 (c) in a licensed youth group home as defined in  
4 41-3-1102; or

5 (d) under home arrest, either in his own home or in one  
6 of the facilities described in subsections (1)(a) through  
7 (1)(c), as provided in [sections 1 through 6].

8 (2) A youth alleged to be in need of care ~~shall~~ may be  
9 placed only in the facilities ~~stated~~ listed in subsection  
10 (1) ~~of this section~~ and ~~shall~~ may not be placed in a jail or  
11 other facility intended or used for the detention of adults  
12 charged with criminal offenses.

13 (3) After a probable cause hearing provided for in  
14 41-5-303, a youth alleged to be a delinquent youth may be  
15 placed only in the facilities described in subsection (1),  
16 under home arrest as provided in subsection (1), or in a  
17 detention facility as defined in 41-5-103."

18 **Section 8.** Section 41-5-403, MCA, is amended to read:

19 "41-5-403. **Disposition permitted under informal**  
20 **adjustment.** (1) The following dispositions may be imposed by  
21 informal adjustment:

22 (a) probation;

23 (b) placement of the youth for substitute care into a  
24 youth care facility as defined in 41-3-1102 and as  
25 determined by the department;

1 (c) placement of the youth in a private agency  
2 responsible for the care and rehabilitation of ~~such-a~~ the  
3 youth as determined by the department;

4 (d) restitution upon approval of the youth court judge;  
5 (e) placement of the youth under home arrest as  
6 provided in [sections 1 through 6].

7 (2) In determining whether restitution is appropriate  
8 in a particular case, the following factors may be  
9 considered in addition to any other evidence:

10 (a) age of the youth;

11 (b) ability of the youth to pay;

12 (c) ability of the parents or legal guardian to pay;

13 (d) amount of damage to the victim; and

14 (e) legal remedies of the victim; however, the ability  
15 of the victim or his insurer to stand any loss may not be  
16 considered in any case.

17 (3) If the youth violates his aftercare agreement as  
18 provided for in 53-30-226, he must be returned to the court  
19 for further disposition. ~~No A~~ youth may not be placed in a  
20 state youth correctional facility under informal  
21 adjustment."

22 **Section 9.** Section 41-5-523, MCA, is amended to read:

23 "41-5-523. **(Temporary) Disposition of delinquent youth**  
24 **and youth in need of supervision.** (1) If a youth is found to  
25 be delinquent or in need of supervision, the youth court may

1 enter its judgment making any of the following dispositions:

2 (a) place the youth on probation;

3 (b) commit the youth to the department if the court  
4 determines that the youth is in need of placement in other  
5 than the youth's own home, provided, however, that:

6 (i) in the case of a youth in need of supervision, the  
7 court shall determine whether continuation in the home would  
8 be contrary to the welfare of the youth and whether  
9 reasonable efforts have been made to prevent or eliminate  
10 the need for removal of the youth from his home. The court  
11 shall include such a determination in the order committing  
12 the youth to the department.

13 (ii) in the case of a delinquent youth who is determined  
14 by the court to be a serious juvenile offender, the judge  
15 may specify that the youth be placed in a youth correctional  
16 facility if the judge finds that such the placement is  
17 necessary for the protection of the public;

18 (c) order restitution by the youth or his parents;

19 (d) impose a fine as authorized by law if the violation  
20 alleged would constitute a criminal offense if committed by  
21 an adult;

22 (e) require the performance of community service;

23 (f) require the youth, his parents, his guardians, or  
24 the persons having legal custody of the youth to receive  
25 counseling services;

1 (g) require the medical and psychological evaluation of  
2 the youth, his parents, his guardians, or the persons having  
3 legal custody of the youth;

4 (h) require the parents, guardians, or other persons  
5 having legal custody of the youth to furnish such services  
6 as the court may designate;

7 (i) order such further care, treatment, evaluation, or  
8 relief that the court considers beneficial to the youth and  
9 the community and that does not obligate funding from the  
10 department without the department's approval, except that a  
11 youth may not be placed by a youth court in a residential  
12 treatment facility as defined in 50-5-101. Only the  
13 department may, pursuant to subsection (1)(b), place a youth  
14 in a residential treatment facility.

15 (j) commit the youth to a mental health facility if,  
16 based upon the testimony of a professional person as defined  
17 in 53-21-102, the court finds that the youth is seriously  
18 mentally ill as defined in 53-21-102. The youth is entitled  
19 to all rights provided by 53-21-114 through 53-21-119. Upon  
20 release or discharge from the mental health facility, the  
21 youth must be returned to the court for further disposition  
22 in accordance with this section unless the court order has  
23 expired or the court no longer retains jurisdiction under  
24 41-5-205.

25 (k) place the youth under home arrest as provided in

[sections 1 through 6].

(2) When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

(a) A youth in need of supervision may not be placed in a youth correctional facility.

(b) A youth may not be held in a youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. Nothing in this section limits the power of the department to enter into an aftercare agreement with the youth pursuant to 53-30-226.

(c) No A youth may not be placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.

(3) A youth placed by the department in a youth correctional facility must be supervised by the department. A youth placed in any other placement must be supervised by the youth probation officer of the youth court having jurisdiction over the youth.

(4) At any time after the youth has been taken into

custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to a waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision, order the youth to be evaluated by the department for a period not to exceed 45 days. The department shall determine the place and manner of evaluation.

(5) No An evaluation of a youth may not be performed at the Montana state hospital unless such the youth is transferred to the district court under 41-5-206.

(6) Any order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(7) Whenever the court commits a youth to the department, it must shall transmit with the dispositional judgment copies of a medical report and such any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

41-5-523. (Effective July 1, 1991) Disposition of delinquent youth and youth in need of supervision. (1) If a youth is found to be delinquent or in need of supervision, the youth court may enter its judgment making any of the following dispositions:

(a) place the youth on probation;

1 (b) commit the youth to the department if the court  
2 determines that the youth is in need of placement in other  
3 than the youth's own home, provided, however, that:

4 (i) in the case of a youth in need of supervision, the  
5 court shall determine whether continuation in the home would  
6 be contrary to the welfare of the youth and whether  
7 reasonable efforts have been made to prevent or eliminate  
8 the need for removal of the youth from his home. The court  
9 shall include such a determination in the order committing  
10 the youth to the department.

11 (ii) in the case of a delinquent youth who is determined  
12 by the court to be a serious juvenile offender, the judge  
13 may specify that the youth be placed in a youth correctional  
14 facility if the judge finds that such the placement is  
15 necessary for the protection of the public;

16 (c) order restitution by the youth or his parents;

17 (d) impose a fine as authorized by law if the violation  
18 alleged would constitute a criminal offense if committed by  
19 an adult;

20 (e) require the performance of community service;

21 (f) require the youth, his parents, his guardians, or  
22 the persons having legal custody of the youth to receive  
23 counseling services;

24 (g) require the medical and psychological evaluation of  
25 the youth, his parents, his guardians, or the persons having

1 legal custody of the youth;

2 (h) require the parents, guardians, or other persons  
3 having legal custody of the youth to furnish such services  
4 as the court may designate;

5 (i) order such further care, treatment, evaluation, or  
6 relief that the court considers beneficial to the youth and  
7 the community and that does not obligate funding from the  
8 department without the department's approval, except that a  
9 youth may not be placed by a youth court in a residential  
10 treatment facility as defined in 50-5-101. Only the  
11 department may, pursuant to subsection (1)(b), place a youth  
12 in a residential treatment facility.

13 (j) commit the youth to a mental health facility if,  
14 based upon the testimony of a professional person as defined  
15 in 53-21-102, the court finds that the youth is seriously  
16 mentally ill as defined in 53-21-102. The youth is entitled  
17 to all rights provided by 53-21-114 through 53-21-119. Upon  
18 release or discharge from the mental health facility, the  
19 youth must be returned to the court for further disposition  
20 in accordance with this section unless the court order has  
21 expired or the court no longer retains jurisdiction under  
22 41-5-205.

23 (k) place the youth under home arrest as provided in  
24 [sections 1 through 6].

25 (2) When a youth is committed to the department, the

department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

(a) A youth in need of supervision may not be placed in a youth correctional facility.

(b) A youth may not be held in a youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. Nothing in this section limits the power of the department to enter into an aftercare agreement with the youth pursuant to 53-30-226.

(c) No A youth may not be placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.

(3) A youth placed by the department in a youth correctional facility must be supervised by the department. A youth placed in any other placement must be supervised by the youth probation officer of the youth court having jurisdiction over the youth.

(4) At any time after the youth has been taken into custody and before final disposition, the court may, with the consent of the youth in the manner provided in 41-5-303

for consent by a youth to a waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision, order the youth to be evaluated for a period not to exceed 45 days. The county commissioners are responsible for the cost of the evaluation and may contract with the department or other public or private agencies to obtain evaluation services.

(5) No An evaluation of a youth may not be performed at the Montana state hospital unless such the youth is transferred to the district court under 41-5-206.

(6) Any order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(7) Whenever the court commits a youth to the department, it must shall transmit with the dispositional judgment copies of a medical report and such any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth."

**Section 10.** Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting except as provided in 61-8-714 and 61-8-722 for sentences for driving

1 under the influence of alcohol or drugs, for a period,  
 2 except as otherwise provided, not exceeding 1 year for any  
 3 misdemeanor or for a period not exceeding 3 years for any  
 4 felony. The sentencing judge may impose upon the defendant  
 5 any reasonable restrictions or conditions during the period  
 6 of the deferred imposition. Reasonable restrictions or  
 7 conditions may include:

- 8 (i) jail base release;
- 9 (ii) jail time not exceeding 180 days;
- 10 (iii) conditions for probation;
- 11 (iv) restitution;
- 12 (v) payment of the costs of confinement;
- 13 (vi) payment of a fine as provided in 46-18-231;
- 14 (vii) payment of costs as provided in 46-18-232 and
- 15 46-18-233;
- 16 (viii) payment of costs of ~~court~~---appointed
- 17 court-appointed counsel as provided in 46-8-113;
- 18 (ix) community service;
- 19 (x) home arrest as provided in [sections 1 through 6];
- 20 ~~(x)~~(xi) any other reasonable conditions considered
- 21 necessary for rehabilitation or for the protection of
- 22 society; or
- 23 ~~(xi)~~(xii) any combination of the above.
- 24 (b) suspend execution of sentence up to the maximum
- 25 sentence allowed for each particular offense. The sentencing

1 judge may impose on the defendant any reasonable  
 2 restrictions or conditions during the period of suspended  
 3 sentence. Reasonable restrictions or conditions may include  
 4 any of those listed in subsections subsection (1)(a)~~(i)~~  
 5 ~~through-(i)(a)(xi).~~

6 (c) impose a fine as provided by law for the offense;

7 (d) require payment of costs as provided in 46-18-232  
 8 or payment of costs of court-appointed counsel as provided  
 9 in 46-8-113;

10 (e) commit the defendant to a correctional institution,  
 11 with or without a fine as provided by law for the offense;

12 (f) impose any combination of subsections (1)(b)  
 13 through (1)(e).

14 (2) If any a financial obligation is imposed as a  
 15 condition under subsection (1)(a), sentence may be deferred  
 16 for a period not exceeding 2 years for any a misdemeanor or  
 17 for a period not exceeding 6 years for any a felony,  
 18 regardless of whether any other conditions are imposed.

19 (3) If any restrictions or conditions imposed under  
 20 subsection (1)(a) or (1)(b) are violated, the court shall  
 21 consider any elapsed time and either expressly allow part or  
 22 all of it as a credit against the sentence or reject all or  
 23 part as a credit and state its reasons in the order. Credit,  
 24 however, must be allowed for jail or home arrest time  
 25 already served.

(4) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(3), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-502(3), 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of such the imprisonment.

(8) In imposing a sentence on a defendant convicted of a sexual offense as defined in 46-23-502, the court may not

waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(9) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program."

**Section 11.** Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving under the influence of alcohol or drugs. (1) A Except as provided in subsection (7), a person convicted of a violation of 61-8-401 shall be punished by imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a fine of not less than \$100 or more than \$500. The jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.

(2) On Except as provided in subsection (7), on a second conviction, he shall be punished by a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, at least 48 hours of which must be served consecutively, or more than 6 months. Three Except as provided in subsection (7), 3 days of the jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.

1       (3) On Except as provided in subsection (7), on the  
2 third or subsequent conviction, he shall be punished by  
3 imprisonment for a term of not less than 30 days, at least  
4 48 hours of which must be served consecutively, or more than  
5 1 year, and by a fine of not less than \$500 or more than  
6 \$1,000. Notwithstanding Except as provided in subsection  
7 (7), notwithstanding any provision to the contrary providing  
8 for suspension of execution of a sentence imposed under this  
9 subsection, the imposition or execution of the first 10 days  
10 of the ~~ja~~ sentence imposed for a third or subsequent  
11 offense that occurred within 5 years of the first offense  
12 may not be deferred or suspended.

13       (4) In addition to the punishment provided in this  
14 section, regardless of disposition, the defendant shall  
15 complete an alcohol information course at an alcohol  
16 treatment program approved by the department of  
17 institutions, which may, in the sentencing court's  
18 discretion and upon recommendation of a certified chemical  
19 dependency counselor, include alcohol or drug treatment, or  
20 both. On conviction of a second or subsequent offense under  
21 this section, in addition to the punishment provided in this  
22 section, regardless of disposition, the defendant shall  
23 complete an alcohol information course at an alcohol  
24 treatment program approved by the department of  
25 institutions, which must include alcohol or drug treatment,

1 or both. Each counselor providing education or treatment  
2 shall, at the commencement of the education or treatment,  
3 notify the court that the defendant has been enrolled in a  
4 course or treatment program. If the defendant fails to  
5 attend the course or the treatment program, the counselor  
6 shall notify the court of the failure. As long as the  
7 alcohol information course and treatment program are  
8 approved as provided in this subsection, the defendant may  
9 attend the information course and treatment program of his  
10 choice. The treatment provided to the defendant at a  
11 treatment program must be at a level appropriate to his  
12 alcohol problem, as determined by the judge based upon the  
13 recommendation from the certified chemical dependency  
14 counselor.

15       (5) For the purpose of determining the number of  
16 convictions under this section, "conviction" means a final  
17 conviction, as defined in 45-2-101, in this state,  
18 conviction for a violation of a similar statute in another  
19 state, or a forfeiture of bail or collateral deposited to  
20 secure the defendant's appearance in court in this state or  
21 another state, which forfeiture has not been vacated. An  
22 offender is considered to have been previously convicted for  
23 the purposes of this section if less than 5 years have  
24 elapsed between the commission of the present offense and a  
25 previous conviction. If there has been no additional



conviction for an offense under this section for a period of 5 years after a prior conviction hereunder under this section, then all records and data relating to the prior conviction are confidential criminal justice information as defined in 44-5-103 and public access to the information may only be obtained by district court order upon good cause shown.

(6) For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.

(7) The court may order that a term of imprisonment imposed under this section be served under home arrest as provided in [sections 1 through 6]."

**Section 12.** Section 61-8-722, MCA, is amended to read:

"61-8-722. Penalty for driving with excessive blood alcohol concentration. (1) A Except as provided in subsection (7), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than \$100 or more than \$500.

(2) On Except as provided in subsection (7), on a second conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less than

\$300 or more than \$500.

(3) On Except as provided in subsection (7), on a third or subsequent conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and by a fine of not less than \$500 or more than \$1,000.

(4) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d) relating to revocation and suspension of driver's licenses ~~shall~~ apply to any conviction under 61-8-406.

(5) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of institutions, which may include alcohol or drug treatment, or both, if considered necessary by the counselor conducting the program. Each counselor providing such education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

(6) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state or a

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0148, Second Reading.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill allowing home arrest in lieu of imprisonment for certain criminal offenses; home arrest for both adult and juvenile offenders; prohibiting home arrest for certain felony offenses; amending sections and providing an applicability date."

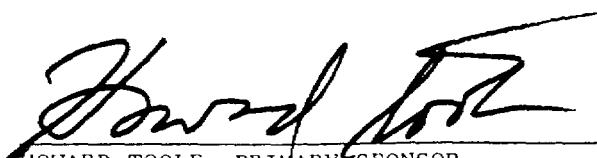
ASSUMPTIONS:

1. As amended, HB0148 will have no appreciable impact upon the Department of Institutions. Two of the amendments removed the majority of the initial impact:
  - a. The department may now accept or reject any referral from the court.
  - b. The department is the recognized supervising authority for adult felons only. Previously the department would also have been required to supervise misdemeanants.
2. Home arrest for second and third DUI convictions has been removed from HB0148.
3. The bill allows for the defendant to pay the costs associated with home arrest, if capable.
4. If she/he is not capable, the defendant would be placed in current level corrections programs (Intensive Supervision Program or Probation).

FISCAL IMPACT:

No impact.

 1-23-91  
ROD SUNDSTED, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 1/23/91  
HOWARD TOOLE, PRIMARY SPONSOR      DATE  
Fiscal Note for HB0148, Second Reading      HB 148 Rev.

jail then it would be fine. The defendant should have the option if the judge has the option.

Craig L. Hoppe, Western Vice President - Montana Magistrates Association, gave written testimony opposing HB 101. EXHIBIT 3

Questions From Committee Members:

REP. MESSMORE asked REP. RUSSELL if she be willing to accept an amendment in regards to Mr. Staples testimony, in getting the consent of the defendant as to whether he would want to go to the pre-release center? REP. RUSSELL stated that she would be willing to discuss that in executive session.

REP. BROOKE asked Mr. Christiaens if he could describe what now exists in his program and what type of percentage of the funds does he receive? Mr. Christiaens stated that the defendant pays the \$28.50. The pre-lease center receives the entire \$28.50 to pay for meals and counseling.

CHAIRMAN STRIZICH asked Mr. Christiaens if it is understood that the counseling is required when they accept an offender into his program? Mr. Christiaens stated that it is something the center does as a benefit for anyone who is sent to the center. It is not understood.

REP. MEASURE asked Mr. Christiaens if it is the intent of the centers to house the individual that needs to be incarcerated for 6 months? Mr. Christiaens stated that pre-release centers are not a chemical dependency treatment program. He stated that if a judge wants to sentence someone to the center for 6 months and they had the ability to pay and were willing to do so, the center might work out some other type of opportunity through community service or work release. REP. MEASURE asked Mr. Christiaens if his center does chemical dependency counseling? Mr. Christiaens stated that they have counselors who talk about chemical dependency and the majority of their residents are chemically dependant. He stated that the center's counselors are not certified chemical dependency counselors but they understand the problems.

Closing by Sponsor:

REP. RUSSELL stated that this bill does give the state an option to jail overcrowding and hoped the committee could support it.

HEARING ON HB 148

ALLOW HOME ARREST IN LIEU OF INCARCERATION--MISD. & FELONY

Presentation and Opening Statement by Sponsor:

REP. TOOLE, HOUSE DISTRICT 60, stated that this is a bill dealing with home arrest and makes possible a new way of dealing with

incarceration. The method of incarceration, home arrest, is already in place in Montana. The Department of Institutions operates an intensive supervision program for certain inmates that are released from the Montana State Prison. The program consists of an electrical device that insures the inmate stays in his or her place of residence instead of in prison. REP. TOOLE handed out amendments suggested by the Department of Institutions. EXHIBIT 4

Proponents' Testimony:

James Pomeroy, Chief - Corrections Bureau, Department of Institutions, state that the Department of Institutions is in support of this bill once the amendments have been adopted by the committee. He stated that home arrest has been demonstrated to be a useful correctional tool and is growing in popularity in use throughout the country. The bill, as amended, will have some impact on the corrections division which will be revenue neutral. He felt that home arrest will impact the Department's probation and parole case loads.

Opponents' Testimony: none

Questions From Committee Members:

REP. WHALEN asked Mr. Pomeroy if the bill creates a situation where there is an increase of demand to place people in these places? Mr. Pomeroy stated that this is only an alternative and it goes along with the Department's fight to help the overcrowding problem the state is facing in our prison system.

Closing by Sponsor:

REP. TOOLE stated that this bill is a good alternative to prison sentencing and will aid in the problem of prison overcrowding. "I would urge the committee to support this bill."

EXECUTIVE ACTION ON HB 26

Motion: REP. DARKO MOVED HB 26 DO PASS.

Motion: REP. RICE moved to amend HB 26. EXHIBIT 5

Discussion:

REP. RICE stated that he had a concern about this bill during the hearing. There are different types of options that are authorized in the State. Those that are processed by the Department of Family Services, Private Adoption Agencies and those that come together without and intermediary. He stated that the later are considered private adoptions and they need to be separated from private adoption agencies. Private adoptions

make up about 80% of adoptions that go on in the state of Montana. He stated that his concern is that all the proponents were from Private Adoption Agencies and they proposed a bill that did not apply to them. He felt that they were proposing regulations that the private adoption process they were very strict and a burden to the private adoption process. "We may need to tighten up the regulations somewhat, but the extent that was proposed seems extreme."

REP. MEASURE asked if at this point the Department of Social Rehabilitation Services contract out the investigation of to a private agency and if the private agency determines counseling is necessary for any of the three individuals that enter into this agreement, they can request that?

REP. RICE stated that is correct.

REP. MEASURE stated that he liked the amendments. He stated that one of the reason the home study was done by a state agency because the state has a strong interest in these cases. He stated that he was a little leery of giving the authority to a private agency for counseling.

REP. RICE asked REP. MEASURE if he wanted the judge to make the decision in regard to counseling? REP. MEASURE said "yes". REP. RICE stated that it was his intent that the investigator would make the recommendation and the judge would make the decision to order counseling. He asked REP. MEASURE if that was agreeable to him? REP. MEASURE stated that it was and didn't realize it was in the bill.

REP. WHALEN stated that the home study is needed in a great many adoptions. The state needs to have a judge look over the home study and make the decision for counseling. He felt it was an important part of adoption.

REP. RUSSELL asked REP. RICE if the private adoptions he his referring to is primarily done by lawyers? REP. RICE stated that is correct.

Vote: Motion carried unanimously.

Motion/Vote: REP. RICE MOVED HB 26 DO PASS AS AMENDED. Motion carried unanimously.

#### EXECUTIVE ACTION ON HB 148

Motion: REP. TOOLE MOVED HB 148 DO PASS.

Motion: REP. TOOLE moved to amend HB 148. EXHIBIT Motion carried.

Motion: REP. GOULD MOVED HB 148 DO PASS AS AMENDED.

Discussion:

CHAIRMAN STRIZICH stated that John MacMaster has some clean up amendments.

John MacMaster stated that the first amendment is in section 2 of the bill, subsection 2c. The court may set conditions which may include but doesn't say limited conditions. He stated that he changed it so say "these are the only conditions they may set". He felt REP. TOOLE should decide on page 6 whether he wants these to be the only conditions or if the court may set other conditions.

REP. TOOLE stated that the conditions should be specifically set out and implemented and that on page three to delete subsection c on lines 21 and 21.

Motion/Vote: REP. DARKO moved to amend HB 148 with the clean-up amendments explained by John MacMaster and Rep. Toole. Motion carried.

Motion/Vote: REP. TOOLE MOVED HB 148 DO PASS AS AMENDED. Motion carried.

EXECUTIVE ACTION ON HB 72

Motion: REP. RICE MOVED HB 72 DO PASS.

Motion: REP. RICE moved to amend HB 72. EXHIBIT (get amendments from jan. 17th meeting.)

Discussion:

REP. RICE stated the amendments restricts the application of the bill to misdemeanors only.

Vote: Motion carried.

Motion/Vote: REP. RICE MOVED HB 72 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 70

Motion: REP. BROWN MOVED HB 70 DO PASS.

Motion: REP. MEASURE moved to amend HB 70 with the first amendment by the Montana Technical Council. EXHIBIT

# HOUSE OF REPRESENTATIVES

## JUDICIARY COMMITTEE

ROLL CALL

DATE Jan. 18, 1991

| NAME                           | PRESENT | ABSENT | EXCUSED |
|--------------------------------|---------|--------|---------|
| REP. VIVIAN BROOKE, VICE-CHAIR | /       |        |         |
| REP. ARLENE BECKER             | /       |        |         |
| REP. WILLIAM BOHARSKI          | /       |        |         |
| REP. DAVE BROWN                | /       |        |         |
| REP. ROBERT CLARK              | /       |        |         |
| REP. PAULA DARKO               | /       |        |         |
| REP. BUDD GOULD                | /       |        |         |
| REP. ROYAL JOHNSON             | /       |        |         |
| REP. VERNON KELLER             | /       |        |         |
| REP. THOMAS LEE                | /       |        |         |
| REP. BRUCE MEASURE             | /       |        |         |
| REP. CHARLOTTE MESSMORE        | /       |        |         |
| REP. LINDA NELSON              | /       |        |         |
| REP. JIM RICE                  | /       |        |         |
| REP. ANGELA RUSSELL            | /       |        |         |
| REP. JESSICA STICKNEY          | /       |        |         |
| REP. HOWARD TOOLE              | /       |        |         |
| REP. TIM WHALEN                | /       |        |         |
| REP. DIANA WYATT               | /       |        |         |
| REP. BILL STRIZICH, CHAIRMAN   | /       |        |         |
|                                |         |        |         |
|                                |         |        |         |
|                                |         |        |         |
|                                |         |        |         |

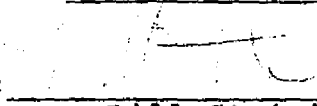
11:30 AM  
121-11  
JDP

HOUSE STANDING COMMITTEE REPORT

January 21, 1991

Page 1 of 4

Mr. Speaker: We, the committee on Judiciary report that House Bill 148 (first reading copy -- white) do pass as amended.

Signed:   
Bill Strizich, Chairman

And, that such amendments read:

1. Page 1, line 17.

Strike: "Approved monitoring"

Insert: "Monitoring"

2. Page 1, lines 18 and 19.

Following: "apparatus" on line 18

Strike: remainder of line 18 through "institutions," on line 19

3. Page 1, line 22 through page 2, line 2.

Following: "intrusive." on line 22

Strike: remainder of line 22 through "home." on page 2, line 2

4. Page 2, line 5.

Following: "area"

Insert: "approved by the supervising authority"

5. Page 2, lines 5 through 8.

Following: "area."

Strike: remainder of line 5 through "." on line 8

6. Page 2, line 15.

Following: "means"

Insert: ", in the case of an adult felon,"

7. Page 2, lines 15 and 16.

Following: "means the" on line 15

Strike: remainder of line 15 through "bureau of the" on line 16



8. Page 2, line 17.

Following: "institutions"

Insert: "; in the case of an adult misdemeanor, a court-approved entity other than the corrections division of the department of institutions;"

9. Page 3, lines 15 through 17.

Following: "(a)" on line 15

Strike: remainder of line 15 through "officer;" on line 17

Insert: "refer the case to the appropriate supervising authority for approval and acceptance into the home arrest program. The supervising authority may accept or reject any referral."

10. Page 3, lines 20 and 21.

Strike: subsection (c) in its entirety

Renumber: subsequent subsections

11. Page 3, line 22 through page 4, line 1.

Following: "(d)" on line 22

Strike: remainder of line 22 through "determines" on page 4, line 1

Insert: "order a term of home arrest in lieu of a sentence of imprisonment in the county jail or state prison"

12. Page 4, line 7.

Strike: "reimprisonment"

Insert: "imprisonment"

13. Page 4, line 23.

Strike: "supervising authority"

Insert: "clerk of the sentencing court"

14. Page 4, line 25 through page 5, line 1.

Following: "(1)" on line 25

Strike: remainder of line 25 through "include" on page 5, line 1

Insert: "A home arrestee must be confined to his home under conditions imposed by the sentencing court, which may include but are not limited to"

15. Page 5, line 13.

Strike: "or"

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January 21, 1991  
Page 3 of 4

16. Page 5, line 15.

Strike: "."

Insert: "; or"

17. Page 5, lines 16 and 17.

Strike: subsection (b) in its entirety

18. Page 5, line 18.

Strike: "(c)"

Insert: "(vii)"

Strike: "The home arrestee shall conform"

Insert: "conforming"

19. Page 5, line 22.

Strike: "(d)"

Insert: "(b)"

20. Page 5, line 24.

Strike: "(e)"

Insert: "(c)"

21. Page 6, line 2.

Strike: "(f)"

Insert: "(d)"

22. Page 6, line 5.

Strike: "(g)"

Insert: "(e)"

Strike: "Any other reasonable conditions may be"

Insert: "Conditions"

23. Page 6, line 6.

Strike: ", including"

Insert: "may include"

24. Page 6, line 16.

Following: line 15

Insert: "(3) Violation of the provisions of any condition of  
home arrest may subject the home arrestee to prosecution  
under 45-7-306."

January 21, 1991  
Page 4 of 4

25. Page 22, lines 14, 15, 22, and 24.

Page 23, line 10.

Following: "~~jail~~"

Insert: "imprisonment"

26. Page 22, line 17.

Page 23, line 1.

Page 25, line 22.

Page 26, line 2.

Strike: "Except as provided in subsection (7), on"

Insert: "On"

27. Page 22, lines 21 and 22.

Strike: "Except" on line 21 through "3" on line 22

Insert: "Three"

28. Page 23, lines 6 and 7.

Strike: "Except" on line 6 through "notwithstanding" on line 7

Insert: "Notwithstanding"

29. Page 25, line 13.

Page 27, line 13.

Following: "served"

Insert: "by imprisonment"

30. Page 25, lines 17 and 18.

Strike: "Except" on line 17 through "a" on line 18

Insert: "A"

Amendments to House Bill No. 148  
White Reading Copy

Requested by Representative Toole  
For the Committee on Judiciary

Prepared by Valencia Lane  
January 17, 1991

1. Page 1, line 17.  
Strike: "Approved monitoring"  
Insert: "Monitoring"
2. Page 1, lines 18 and 19.  
Following: "apparatus" on line 18  
Strike: remainder of line 18 through "institutions," on line 19
3. Page 1, line 22 through page 2, line 2.  
Following: "intrusive." on line 22  
Strike: remainder of line 22 through "home." on page 2, line 2
4. Page 2, line 5.  
Following: "area"  
Insert: "approved by the supervising authority"
5. Page 2, lines 5 through 8.  
Following: "area."  
Strike: remainder of line 5 through "." on line 8
6. Page 2, line 15.  
Following: "means"  
Insert: ", in the case of an adult felon,"
7. Page 2, lines 15 and 16.  
Following: "means the" on line 15  
Strike: remainder of line 15 through "bureau of the" on line 16
8. Page 2, line 17.  
Following: "institutions"  
Insert: "; in the case of an adult misdemeanor, a court-approved entity other than the corrections division of the department of institutions;"
9. Page 3, lines 15 through 17.  
Following: "(a)" on line 15  
Strike: remainder of line 15 through "officer" on line 17  
Insert: "refer the case to the appropriate supervising authority"

for approval and acceptance into the home arrest program.  
The supervising authority may accept or reject any  
referral."

10. Page 3, line 22 through page 4, line 1.

Following: "(d)" on line 22

Strike: remainder of line 22 through "determines" on page 4, line  
1

Insert: "order a term of home arrest in lieu of a sentence of  
imprisonment in the county jail or state prison"

11. Page 4, line 7.

Strike: "reimprisonment"

Insert: "imprisonment"

12. Page 4, line 23.

Strike: "supervising authority"

Insert: "clerk of the sentencing court"

13. Page 4, line 25 through page 5, line 1.

Following: "(1)" on line 25

Strike: remainder of line 25 through "include" on page 5, line 1

Insert: "A home arrestee must be confined to his home under  
conditions imposed by the sentencing court, which may  
include but are not limited to"

14. Page 5, line 13.

Strike: "or"

15. Page 5, line 15.

Strike: "."

Insert: "; or"

16. Page 5, lines 16 and 17.

Strike: subsection (b) in its entirety

17. Page 5, line 18.

Strike: "(c)"

Insert: "(vii)"

Strike: "The home arrestee shall conform"

Insert: "conforming"

18. Page 5, line 22.

Strike: "(d)"

Insert: "(b)"

EXHIBIT 4  
DATE 1-18-91  
HB 148

19. Page 5, line 24.  
Strike: "(e)"  
Insert: "(c)"

20. Page 6, line 2.  
Strike: "(f)"  
Insert: "(d)"

21. Page 6, line 5.  
Strike: "(g)"  
Insert: "(e)"  
Strike: "Any other reasonable conditions may be"  
Insert: "Conditions"

22. Page 6, line 6.  
Strike: ", including"  
Insert: "may include"

23. Page 6, line 16.  
Following: line 15  
Insert: "(3) Violation of the provisions of any condition of  
home arrest may subject the home arrestee to prosecution  
under 45-7-306."

VISITORS' REGISTER

House Judiciary

BILL NO.

HB# 148

DATE \_\_\_\_\_

Jan. 18, 1991

SPONSOR

Rep. Toole

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Towe carried unanimously.

HEARING ON HOUSE BILL 148

Presentation and Opening Statement by Sponsor:

Representative Howard Toole, District 60, said HB 148 deals with the program of home arrest. He explained it is a relatively new idea that is already being used by the Department of Institutions (DOI), under an intensive supervision programs and established guidelines.

Representative Toole advised the Committee that a home arrestee is monitored electronically, and wears a bracelet type of devise which attaches to a telephone. He said this is a comprehensive, regulatory scheme, originally drafted largely for the jurisdiction of DOI.

Representative Toole told the Committee an amendment split supervision of felonies to the district courts and that of misdemeanors to the JP (justice of the peace) courts. He commented that it is clear that misdemeanor cases are well-suited for this type of treatment.

Representative Toole stated that in section 2 of the bill offenders can petition the court for home arrest in lieu of jail. He said the petition is reviewed by the sentencing judge, and that the juvenile probation unit of youth court will handle juvenile offenders.

Representative Toole said section 3 establishes a broad range of conditions concerning home arrest as it is applied to those on probation and parolees. He added that it is clear the intent is not to limit typical incarceration sentencing by the courts.

Representative Toole explained that section 5 requires home arrestees to be responsible for their own living expenses. He said section 6 lists home arrestees; section 7 allows home arrests for youth court offenses; and section 8 addresses youth court adjustments.

Representative Toole said section 10 modifies basic sentencing statutes on all crimes in the state; section 11 addresses DUI offenses; and section 12 addresses per se offenses. He told the Committee that a House amendment on the floor provided that a first



offense for DUI (24 hours) and a second offense (48 hours) must be served in jail.

Proponents' Testimony:

Dan Russell, Administrator, Division of Corrections, said the bill was amended to meet DOI concerns. He stated his support of the bill, and said he believes it provides a reasonable alternative.

Bill Fleiner, Undersheriff, Lewis and Clark County, and Montana Peace Officers Association, stated his support of the bill. He explained that Lewis and Clark County uses a home arrest system with an ankle bracelet.

Mr. Fleiner proposed changing page 5, lines 6-7 by striking language that fees for supervision and equipment are to be paid to the authority, and inserting that those fees are to be paid to the clerk of court. He explained that the clerk of court also needs to be directed to route those funds back to the supervising authority.

Mr. Fleiner advised the Committee that a small portion of fee monies can be used for indigent persons.

Opponents' Testimony:

There were no opponents.

Questions From Committee Members:

Senator Harp asked how many felons are under home arrest. Dan Russell replied there are 44 persons under intensive supervision in Missoula and Billings.

Senator Harp asked for a "thumbnail sketch" of felons under home arrest. Dan Russell replied they are mostly burglars and drug offenders.

Senator Harp asked if a drug offender could continue to use while under house arrest. Dan Russell replied home arrest is a better option in these instances, and drug use is monitored by urinalysis.

Senator Towe asked about a specified authority petitioning the court in section 2. He asked if DOI were addressed as a supervising authority. Representative Toole replied he believes section 2 does this under the ISP (individual supervisory plan) program. He said DOI determines if the person is suited for home arrest and then approaches the court for judgment. Representative Toole stated he believes it would not affect the way felons are currently being handled. He explained that DOI does not have the authority to petition when an offender does not petition the court. He said HB 319 and HB 320 will be before the Committee concerning adult and juvenile detention, and that Representative Gould would

be presenting HB 48 which commits those people to DOI who has the latitude to place people in the program.

Representative Toole commented that page 7, lines 6-10 (blue copy) may need to be rewritten in view of Senator Towe's question.

Chairman Pinsoneault asked if there were a provision for violation of home arrest. Representative Toole replied it is addressed in section 3 of the bill.

Senator Svrcek asked Bill Fleiner how the bracelets work. Mr. Fleiner replied they are attached with special tools which require training to use. He said that an electronic monitor knows when the bracelets have been cut off, and authorities are notified. Mr. Fleiner told the Committee the bracelets have a range in the home and when that range is exceeded the system is notified immediately. He said the home arrestee must fill out a schedule for the court and the monitoring company if he or she must be away from home.

Senator Svrcek asked Bill Fleiner to bring a device for the Committee to view. He asked how power outages would affect the bracelet. Bill Fleiner replied the bracelets use phone lines and there have been no problems so far. He commented that Lewis and Clark County did have an escapee who turned himself in, and said that although Lewis and Clark County monitors, private entities could also monitor the bracelets.

Chairman Pinsoneault asked if Representative Strizich's "pay-as-you-go" bill would apply to this bill. Representative Toole replied he did not think so.

Lake County Commissioner Ray Harbin, said his county has used the ankle bracelet for two years and also uses an alcohol monitoring system. He explained that a voice print is taken which the computer identifies when the home arrestee is called. Mr. Harbin advised the Committee that Lake County requires advance payment and charges \$15 per day for home arrest.

Senator Towe commented that language in the bill needs to ensure that the funds paid to the clerk of court go to the right place. Representative Toole replied that the sentencing court would be the supervising authority in many instances. Dan Russell added that probation and parole officers can't be collecting money and carrying it around. He said the clerk of the district court could dispense the funds properly.

#### Closing by Sponsor:

Representative Toole said he believes the bill has merit and that it would encourage other agencies to use home arrest. He asked that Senator Halligan carry the bill.

ROLL CALL

SENATE JUDICIARY

COMMITTEE

52<sup>nd</sup> LEGISLATIVE SESSION -- 1999

Date 7 Feb

| NAME             | PRESENT | ABSENT | EXCUSED |
|------------------|---------|--------|---------|
| Sen. Pinsoneault | ✓       |        |         |
| Sen. Yellowtail  | ✓       |        |         |
| Sen. Brown       | ✓       |        |         |
| Sen. Crippen     | ✓       |        |         |
| Sen. Doherty     | ✓       |        |         |
| Sen. Grosfield   | ✓       |        |         |
| Sen. Halligan    | ✓       |        |         |
| Sen. Harp        | ✓       |        |         |
| Sen. Mazurek     | ✓       |        |         |
| Sen. Rye         | ✓       |        |         |
| Sen. Svrcek      | ✓       |        |         |
| Sen. Towe        | ✓       |        |         |
|                  |         |        |         |
|                  |         |        |         |
|                  |         |        |         |

Each day attach to minutes.

Amendments, Discussion, and Votes:

Senator Towe made a motion that the amendments to HB 148 be approved (Exhibit #4). The motion carried unanimously.

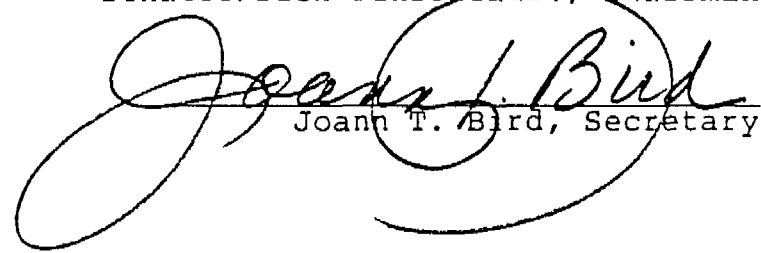
Recommendation and Vote:

Senator Towe made a motion that HB 148 BE CONCURRED IN AS AMENDED. The motion carried unanimously and Senator Towe was asked to carry the bill.

ADJOURNMENT

Adjournment At: 11:15 a.m.

  
\_\_\_\_\_  
Senator/Dick Pinsoneault, Chairman

  
\_\_\_\_\_  
Joann T. Bird, Secretary

DP/jtb

ROLL CALLSENATE JUDICIARY

COMMITTEE

52<sup>nd</sup> LEGISLATIVE SESSION -- 1991Date 12 Feb 91

| NAME             | PRESENT | ABSENT | EXCUSED |
|------------------|---------|--------|---------|
| Sen. Pinsoneault | ✓       |        |         |
| Sen. Yellowtail  | ✓       |        |         |
| Sen. Brown       | ✓       |        |         |
| Sen. Crippen     | ✓       |        |         |
| Sen. Doherty     | ✓       |        |         |
| Sen. Grosfield   | ✓       |        |         |
| Sen. Halligan    | ✓       |        |         |
| Sen. Harp        | ✓       |        |         |
| Sen. Mazurek     | ✓       |        |         |
| Sen. Rye         | ✓       |        |         |
| Sen. Svrcek      | ✓       |        |         |
| Sen. Towe        | ✓       |        |         |
|                  |         |        |         |
|                  |         |        |         |
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Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 12 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 148 (third reading copy -- blue), respectfully report that House Bill No. 148 be amended and as so amended be concurred in:

1. Page 5, line 7.

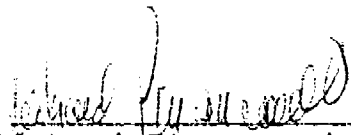
Following: "COURT"

Insert: "and must be distributed by the clerk to the supervising authority"

2. Page 7, line 10.

Following: "."

Insert: "However, this section does not prevent the use of a monitoring device as a part of an intensive supervision program or other program of the department of institutions."

Signed:   
Richard Finsoneault, Chairman

*1991 2-12-91*  
And. Coord.

\_\_\_\_\_  
Sec. of Senate

32100200.511

Amended  
12 Feb 91  
HD 149

Amendments to House Bill No. 148  
Third Reading Copy (Blue)

Requested by Senator Towe  
For the Committee on Judiciary

Prepared by Valencia Lane  
February 8, 1991

1. Page 5, line 7.

Following: "COURT"

Insert: "and must be distributed by the clerk to the supervising  
authority"

2. Page 7, line 10.

Following: "."

Insert: "However, this section does not prevent the use of a  
monitoring device as a part of an intensive supervision  
program or other program of the department of institutions."